

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

**THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO**

as representative of

**THE COMMONWEALTH OF PUERTO
RICO, *et. al.*,**

Debtors

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**The filing relates to the
Commonwealth, HTA, and ERS.**

**ASOCIACIÓN DE EMPLEADOS DEL ESTADO LIBRE ASOCIADO DE PUERTO
RICO'S ANSWER TO THE NINETY-FOURTH OMNIBUS OBJECTION (NON-
SUBSANTIVE) OF THE COMMONWEALTH OF PUERTO RICO, PUERTO RICO
HIGHWAYS AND TRANSPORTATION AUTHORITY, AND EMPLOYEES
RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO TO DEFICIENT CLAIMS**

TO THE HONORABLE COURT:

COMES NOW Asociación de Empleados del Estado Libre Asociado de Puerto Rico (“AEELA”), through its undersigned counsel, and respectfully states and requests:

1. On February 22, 2019, AEELA filed Prime Clerk Proof of Claim Number 168183 (POC No. 168183”) for \$2,108,592.00, against the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (the “ERS”).
2. On October 24, 2019, the Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Highways and Transportation Authority (“HTA”) and the ERS (collectively the “Debtors”) filed their Ninety-Fourth Omnibus Objection (Non-Substantive) to Deficient Claims (the “Objection”).
3. The Objection seeks for the Court to disallow the proofs of claim listed on **Exhibit A** thereto, which includes POC No. 168183.

4. In paragraph 13 of the Objection it is alleged that each of the proofs of claim listed on Exhibit A thereto, referred to as Deficient Claims, “purport” to be based on obligations owed to the applicable claimant by the Commonwealth, HTA, or the ERS, but failed to provide any information identifying the nature or source of the obligations or explaining why the Commonwealth, HTA, the ERS, or any other Title III debtors are liable to the claimant, and that therefore, because of that failure, the proofs of claims should be disallowed in their entirety.

5. The Objection further states that pursuant to the “Authorized Mailings Order” on August 19, 2019, the Debtors sent letters to each claimant subject to the Objection requesting additional information for the assessment of their claims, since according thereto the descriptions included on the proofs of claim were too vague for the Debtors to understand the same; and that each of such claimants failed to respond.

6. Neither AEELA’s management, nor the undersigned counsel recall having received such a request for additional information.

7. Rule 3001(a) of the Federal Rules of Bankruptcy Procedure provides that “[a] proof of claim is a written statement setting forth a creditor’s claim” which “shall conform substantially to the appropriate Official Form”.

8. In line with Rule 3001(a), AEELA filed POC No. 168183, which is not based on a writing, in Modified Official Form for the Title III cases before the Court, indicating that the \$2,108,592.00 claimed is the amount corresponding thereto as its participation in the sale of the ERS’ assets.

9. An amendment to a proof of claim is freely permitted so long as the claim initially provides, as here, adequate notice of the existence, nature and amount of the claim, as well as the creditor’s intent to hold the estate liable. Late filed amendment to proofs of claim should be

liberally allowed when the purpose is to cure a defect in the claim as filed. In re Uniol, Inc. 962 F 2d. 988 (10th Cir. 1992).

10. Joint Resolution of Puerto Rico House of Representatives number 188, approved on June 23, 2017 (the “Resolution”), ordered the ERS to sell its assets and assigned under custody of the Office of Management and Budget \$390,480,000.00, for the payment to pensioners of the ERS, the judiciary and the teachers from the funds arising from the assets available to such systems. The Resolution provides that the assignment is to form part of the Consolidated Budget chargeable to the General Fund for fiscal year 2017-2018. Its effective date was July 1, 2018.

11. On August 23, 2017, Law Number 106-2017 was approved, which in its pertinent part addresses the insolvency of the Retirement Systems and provides for the General Fund of the Commonwealth and other participants, as AEELA, to assume the responsibility to pay all accrued pensions through the “Pay as you Go” system, commencing on July 1, 2017. As a result, the Law Number 106-2017 eliminated employers’ contributions as well as the Additional Uniform Contribution (“AAU”) established by Law Number 32-2013 to fund the cash flow of the Retirement Systems, commencing in fiscal year 2013-2014 until fiscal year 2013-2014.

12. Article 1.4 of the law provides:

“... the Retirement Systems must contribute their available funds and not product of the liquidation of its assets to the General Fund to assist in the payment of the Accrued Pensions, except the building seat of the Teachers Retirement System, known as the Capital Centers Building, North Tower, located in Hato Rey, Puerto Rico, which will not have to be liquidated. Once the Retirement Systems exhaust their assets, the Account for the Payment of the Accrued Pensions, which will be nurtured to a great extent for the General Fund, as provided for in this Law, will assume and guarantee the payment of the Accrued Pensions as established in this Law...”

13. As it appears from the communication of March 8, 2017 delivered to AEELA’s

Executive Director, Pablo Crespo Claudio, Mrs. Cecile Tirado Soto, Assistant Director of the Retirement Systems, indicated that the estimated percentage to be paid by AEELA as AAU for fiscal year 2017-2018 was 0.54%, equivalent to approximately \$3,712,455.13 (See **Exhibit A**). Therefore, if AEELA is responsible for 0.54% of the cash flow deficit of the ERS for the payment of the pensions of its pensioners, it should benefit from the \$390,000,000.00 assignment in that same proportion. If we multiply said amount by 0.54% the result is the \$2,108,592.00 claimed by AEELA.

14. Since AEELA had to contribute to the cash deficit of the ERS, by the AAU, on the basis of 0.54 for fiscal year 2017-2018 and after the approval of Law Number 106-2017, as of July 1, 2017, AEELA has to pay the totality of the pensions of its present and future pensioners without a credit for the contributions made by them to their pensions, specially the future ones, who contributed for many years thereto, it is not only logical, but fair and equitable for AEELA to share in the sale of the ERS' assets in the same proportion that Law Number 106-2017 requires AEELA to assume the ERS' deficit, as indicated in the preceding paragraph.

WHEREFORE, it is respectfully requested that POC No. 168183 be deemed amended, as indicated above, and that the Objection be denied.

CERTIFICATE OF SERVICE: I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the Office of the United States Trustee, and all CM/ECF participants.

San Juan, Puerto Rico, this 18th day of November 2019.

s/ CHARLES A. CUPRILL-HERNÁNDEZ

USDC-PR 114312

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GOBIERNO DE PUERTO RICO

Administración de los Sistemas de Retiro
de los Empleados del Gobierno y la Judicatura

EXHIBIT A

8 de marzo de 2017

Sr. Pablo Crespo Claudio
Director Ejecutivo
Asociación de Empleados del ELA
PO Box 364508
San Juan, PR 00936-4508

Estimado señor Crespo:

RE: APORTACION ADICIONAL UNIFORME 2017-2018

Mediante la aprobación de la Ley 32-2013, se enmendó la Ley 447 de 15 de mayo de 1951, Ley habilitadora del Fideicomiso de Pensiones del Estado Libre Asociado de Puerto Rico, administrado por la Administración de los Sistemas de Retiro de los Empleados del Gobierno y la Judicatura (Retiro). Para ello, entre otras cosas, solventar el déficit de flujo de caja del Sistema, comenzando el año fiscal 2013-2014, hasta el año fiscal 2032-33, mediante la creación de un nuevo Artículo 5-117 en la Ley 447, supra, según enmendada (Ley 447).

Para el referido año fiscal el importe estimado de Aportación Adicional Uniforme 2017-2018 para su entidad asciende a \$3,712,455.13.

Con el propósito de que puedan evaluar e identificar los fondos necesarios en su presupuesto, incluimos el estimado por la Aportación Adicional Uniforme 2017-2018 con sus respectivos impactos económicos aproximados.

Es importante destacar que el patrono será responsable de cumplir con dicho impacto económico para sus respectivas matrículas de empleados. Este costo representa un estimado por lo que está sujeto a cambios.

Cualquier información adicional sobre el particular, pueden comunicarse con la División de Recaudaciones al (787) 754-4545, extensiones 1208 y 1245.

Atentamente,


Cecile Tirado Soto
Directora Auxiliar

lro

RETIRO
GOBIERNO DE PUERTO RICO



**218- ASOCIACION DE EMPLEADOS DEL ELA
APORTACION ADICIONAL UNIFORME 2017-2018(LEY 32)**

APORTACION PATRONAL (ASOCIACION EMPLEADOS ELA) 2017-18	\$ 2,667,756.55
DIVIDIDO ENTRE APORTACION PATRONAL TOTAL PAGADA 2017-18	<u>\$ 492,238,471.22</u>
 PORCIENTO CORRESPONDIENTE A (ASOCIACION EMPLEADO ELA)	 0.54%
 CANTIDAD A DISTRIBUIR ENTRE PATRONOS(Déficit)	 \$ 685,000,000.00
MULTIPLICADO POR PORCIENTO CORRESPONDIENTE A (ASOC. EMP. ELA)	<u>0.54%</u>
 CANTIDAD DETERMINADA PARA (ASOCIACION EMPLEADOS ELA)	 <u><u>\$ 3,712,455.13</u></u>

De tener alguna duda estamos a las órdenes,

Luz D. Gutron Tardifello

Contador

División de Recaudaciones

Oficina de Contraloría

Administración de los Sistemas de Retiro

Tel (787) 754-4545 Ext. 1254

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